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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,560	05/15/2001	Hans Berger	66376-252-7	8137
25269 7590 01/29/2007 DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005			EXAMINER LANEAU, RONALD	
			ART UNIT 3714	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

NT

Office Action Summary

Application No.

09/854,560

Applicant(s)

BERGER ET AL.

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The amendment filed on 10/18/06 has been entered. Claims 19-30 and 32 are canceled and claims 1-18 and 31 are now pending.

Allowable Subject Matter

2. The indicated allowability of claims 1-18, and 32 is withdrawn in view of the newly discovered reference(s) to Namismiak et al (US 5,711,160). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 19, 20, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al (US 5,305,199) in view of Namismiak et al (US 5,711,160).

Lobiondo discloses a method for automation of the management of operating materials and/or supplies of an analyzer or analyzing system for determining a parameter or a parameter group of a sample, being used in medical, environmental or food technology, said operating materials being tagged as to types and maximum useful lives and said required supplies being as to types, expiry dates and quantities, comprising: entering a desired frequency of analysis, or automatic calculation of an estimated frequency of analysis from past frequencies of use of said

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analyzer or analyzing system (see fig. 3, projected usage), automatically calculating an amount of said operating materials and/or supplies required per unit of time, based on data obtained in steps (a) and (b) (col. 3, line 67 to col. 4, line 4), determining an optimum point in time for ordering more of said required operating materials and/or supplies, taking into account the maximum useful lives of said required operating materials, the expiry dates and quantities of said required supplies (col. 4, lines 4-9, 39-49), automatically ordering of said operating materials and/or supplies via a device for remote data transmission (col. 4, lines 17-23). Furthermore, Lobiondo discloses a method wherein said operating materials and/or supplies are ordered via an internet connection and wherein said unit for remote data transmission is used to provide an internet portal for information on products, software, service, maintenance, and use, in the fields of medical and food technology (col. 3, lines 16-31). Lobiondo does not explicitly disclose an automatic detecting and recording of useful lives but Namismiak discloses an automatic detecting and recording said types and maximum useful lives of said required operating materials, and said types, expiry dates and quantities of said required supplies (col. 6, lines 10-58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the automatic means as taught by Namismiak into the method of Lobiondo because it would provide a warning when a food item is approaching or has reached the end of its useful lifetime and to provide a quick and simple way to locate a food item stored inside a crowded refrigerator.

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5. Claims 5-18 and 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al (US 5,305,199) in view of Namismiak et al (US 5,711,160) and further in view of Sano et al (US 5,415,840).

Lobiondo et al further teach updating information on product using a software, expected delivery and shipment information that can be transmitted via a link (col. 3, lines 20-24 and 42-46).

Neither Lobiondo nor Namismiak teaches an analyzing system for determining medical sample parameters but Sano et al teach a system for determining medical sample wherein said connection for remote data transmission is provided in a computer central unit of said analyzing system (fig. 1), the analyzer is coupled to the central unit as claimed and can be removed to be inserted in a different position.(col. 4, lines 42-48), said analyzing system is capable of being provided with a sample bus to exchange the samples to be tested between the analyzer and the control unit (col. 4, lines 1-13).

Neither Lobiondo nor Namismiak nor Sano expressly teaches exchanging washing, calibrating and quality control media between analyzer and the control unit but this feature is obvious in the medical field because the system as taught by Sano et al intrinsically would have to do at least some washing, calibrating and quality control media in order to have any kind of exchange between these two elements and also to ensure the reliability of the equipment in use to perform a certain test.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the automatic means as taught by Namismiak into the method of Lobiondo because it would provide a warning when a food item is approaching or has reached the end of

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its useful lifetime and to provide a quick and simple way to locate a food item stored inside a crowded refrigerator. And it would have been obvious to one of ordinary skill in the art to utilize the automatic analyzer as taught by Sano into the combined systems of Lobiondo and Namismiak because it would enable measurement to be performed with simple mechanisms and good reproducibility.

Response to Arguments

6. Applicant's arguments filed on 10/18/06 have been fully considered but they are not persuasive.

The newly added reference Namismiak et al (US 5,711,160) at least provides the missing limitation of Lobiondo and the indication of allowable subject matter in the previous action is withdrawn in view of said new reference. Claims 1-18 and 32 are rejected.\

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on 7:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronald Laneau

Ronald Laneau
Primary Examiner
Art Unit 3714

11/20/07

rl